

**OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN**

**POLICIES AND PROCEDURES**

**OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN  
VIRGINIA DEPARTMENT FOR AGING & REHABILITATIVE SERVICE**

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## **INTRODUCTION**

These chapters describe the policies and procedures that govern Virginia’s Long-Term Care Ombudsman Program. The term “ombudsman,” is derived from the Swedish word “ombudsman” and is defined in Webster’s Dictionary as “a public official appointed to investigate citizens’ complaints against local or national government agencies that may be infringing on the rights of individuals.” A Long-Term Care Ombudsman is a person who assists long-term care recipients to resolve problems concerning the quality of their care, and to protect their freedom to exercise their rights. The Program is dedicated to representing the resident’s / care recipient’s perspective, bringing their voice ‘to the table.’ The Ombudsman and Ombudsman representatives assist care recipients to understand and exercise their rights.

## **BACKGROUND**

**Legal Authority:** 42 U.S.C. §3058g(a)(1)  
45 CFR §1324.11(a), (b)  
Code of Virginia §51.5-135.A.10

Under federal law (the Older Americans Act [OAA]), every state is required to establish an Office of the State Long-Term Care Ombudsman (OSLTCO), headed by the State Long-Term Care Ombudsman (SLTCO) who oversees the operation of an integrated statewide program. The Ombudsman Program advocates on behalf of individual long-term care recipients as well as groups of long-term care recipients. It receives, investigates and works to resolve complaints involving quality of care and exercise of rights, and acts generally to protect and promote the health, safety, welfare and rights of long-term care recipients. It also educates long-term care recipients and their families about their rights and how to advocate on their own behalf when they have a problem or concern.

## 1.0 PROGRAM MISSION AND PURPOSE

*The Virginia Long-Term Care Ombudsman Program advocates for persons receiving long-term care services, whether the care is provided in a nursing home or an assisted living facility, or through community-based long-term care services to assist persons still living at home.*

**Legal Authority:** 42 U.S.C. §3058g(a)(3)(A)  
45 CFR §1324.13(a)  
Code of Virginia §51.5-135.A.10; §51.5-139

**1.1 The Central Mandate** of the Long-Term Care Ombudsman Program is to identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities. Some states, including Virginia, have extended the Program's mandate to include investigating and resolving complaints involving community-based long-term care. A major component of the Program is the provision of information and counseling to individuals regarding both institutional and community based long-term care options, resources, and issues. In addition to one-on-one consultations, the Program works to develop and disseminate information about long-term care to help individuals understand and exercise their rights, access benefits, and make informed long-term care choices.

### 1.2 Systems Advocacy:

**Legal Authority:** 42 U.S.C. §3058g(a)(3)(G)  
45 CFR §1324.13(a)(7)

The Ombudsman Program is unique among Older Americans Act (OAA) programs and services in its mandate to engage in systems advocacy in addition to individual advocacy. To that end, states must ensure that the Program operates with the independence and autonomy to affect such systems advocacy. As the Office of the State Long-Term Care Ombudsman fulfills the federal mandate to give voice to long-term care recipients' perspectives, the positions taken and perspectives represented by the State Long-Term Care Ombudsman may not be consistent with the governmental unit that hosts the program or the state's political leadership. (Code of Virginia § 51.5-142.C). The Ombudsman is expected to actively engage in the discussions and work of committees, boards, task forces, and public forums addressing long-term care and elder rights issues, bringing the long-term care recipient's perspectives to such venues.

Ombudsman representatives monitor care and conditions in long-term care facilities, providing access to its services and a voice for those who have limited ability to speak for themselves. The Program also engages in systems advocacy by identifying problems and concerns, recommending changes in the long-term care system, and by monitoring and

making recommendations concerning regulations and policy affecting long-term care recipients. It works with other consumer advocacy programs, regulatory agencies and providers, collaborating to promote the empowerment and autonomy of long-term care recipients and the resolution of complaints. In all of its endeavors, the Long-Term Care Ombudsman Program seeks to help long-term care recipients and their families to understand their rights, exercise choices, improve quality of life and ensure quality long-term care services.

## **2.0 PROGRAM AUTHORITY**

**Legal Authority:** 42 U.S.C. §3058g  
45 CFR §1324.11  
Code of Va. §51.5-135.A.10; §51.5-139

The Long-Term Care Ombudsman Program is established under the Older Americans Act (OAA), which is administered by the federal government's Administration on Community Living (ACL). The Program's mandates are set forth in Title VII of the OAA, which authorizes elder rights programs to protect the most vulnerable elders. The overarching purpose of the Long-Term Care Ombudsman Program is to protect the health, safety, welfare and rights of long-term care facility residents and to improve the quality of life and care in these facilities. Originally conceived to focus on nursing home residents, the federal program's mandate was expanded to include assisted living facility residents. Virginia's General Assembly chose to expand its state Program's role to include responsibility to investigate complaints regarding community-based long-term care services.

### 3.0 DEFINITIONS

**Legal Authority:** 45 CFR § 1324.1

**Immediate family**, pertaining to conflicts of interest as used in section 712 of the OAA, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

**Office of the State Long-Term Care Ombudsman**, as used in sections 711 and 712 of the OAA, means the organizational unit in a State or territory which is headed by a State Long-Term Care Ombudsman.

**Representatives of the Office of the State Long-Term Care Ombudsman**, as used in sections 711 and 712 of the Act, (**or Ombudsman representatives** as used in this document) means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in § 1324.19(a), whether personnel supervision is provided by the Ombudsman or his or her designees or by an entity hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the OAA.

**Resident representative** means any of the following:

- (1) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;
- (2) A person authorized by state or federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;
- (3) Legal representative, as used in section 712 of the Act; or Final LTCOP Rules and Preamble Language; or
- (4) The court-appointed guardian or conservator of a resident.

Nothing in this definition is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, state or federal law, or a court of competent jurisdiction.

**State Long-Term Care Ombudsman, or Ombudsman**, as used in sections 711 and 712 of the OAA, means the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in §1324.13 and §1324.19.

**State Long-Term Care Ombudsman program, Ombudsman program, or program**, as used in sections 711 and 712 of the OAA, means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.

**Willful interference** means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in § 1324.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in §1324.19.

## 4.0 ORGANIZATIONAL STRUCTURE

### 4.1 Program Location and Structure

**Legal Authority:** 42 U.S.C. § 3058g(a)(1), (a)(4)  
45 CFR § 1324.11(b)  
Code of Va. § 51.5-135.A.10

The statewide program, headed by the State Ombudsman, operates as a single integrated program – the Office of the State Long-Term Care Ombudsman – which is organizationally located within the Virginia Department for Aging and Rehabilitative Services (DARS) and is a separately identifiable unit. To ensure statewide coverage, the State Ombudsman may designate non-profit local entities to host the certified (designated) Program representatives to carry out the functions of the Program locally and regionally. Designated local host entities provide day to day supervision of designated local program representatives while the OSLTCO provides programmatic supervision and direction.

DARS provides a statewide toll-free telephone number (1-800-552-3402) as a central point of access to the program through which callers may be referred to their appropriate local Ombudsman representatives. The OSLTCO maintains a website ([www.ElderRightsVa.org](http://www.ElderRightsVa.org)) which provides information for consumers including contact information for the local Ombudsman representatives. Assistance rendered to residents, long-term care recipients, and their families at the local level includes information assistance and complaint counseling, complaint investigation and resolution, community education, work with resident and family councils, citizen groups, and other systems advocacy initiatives.

### 4.2 Role and Responsibilities of the State Ombudsman

**Legal Authority:** 42 U.S.C. § 3058g(a)(3)  
45 CFR § 1324.13(a)

The State Ombudsman serves on a full-time basis in providing leadership and management of the Office. The State Ombudsman has sole authority for designating and withdrawal of designation of local entities and representatives of the Program, and for disclosure of confidential Program records in specific limited circumstances.

Primary responsibilities:

- Development of Program policies and procedures.
- Provision for training, certification, and programmatic oversight, including monitoring, of local entities and representatives of the Program.

- Designation and withdrawal of designation of local host entities and representatives.
- Provide fiscal management for the statewide Program including approval of allocations for local entities.
- Personally or through representatives of the Office identify, investigate and resolve complaints made by or on behalf of recipients of long-term care services.
- Provide services to protect the health, safety, welfare, and rights of the residents.
- Inform residents about means of obtaining services provided by the Ombudsman Program.
- Ensure that residents have regular and timely access to the services provided through the Ombudsman Program.
- Represent the interests of residents before governmental agencies, assure that individual residents have access to, and pursue (as the Ombudsman determines necessary and consistent with resident interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents.
- Provide administrative and technical assistance to representatives of the Office and their host agencies.
- Coordinate with and promote the development of citizen organizations consistent with the interests of residents.
- Promote and provide technical assistance for the development and support of, resident and family councils to protect the well-being and rights of residents.
- Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State. Such efforts may include:
  - Recommending changes in law/regulations;
  - Facilitating public comment;
  - Providing leadership to statewide systems advocacy efforts; and/or
  - Providing information to legislators, policy makers, etc.
- Independently develop an annual report regarding the activities of the program, and recommendations for policy and legislative changes.
- Promote coordination among agencies and organizations to improve long-term care and protect the health, safety, welfare and rights of care recipients.

### 4.3 Role and Responsibilities of DARS:

**Legal Authority:** 42 U.S.C. § 3058g(a)-(j); 45 CFR § 1324.11, 45 CFR § 1324.15

The Department shall:

- Ensure that the Ombudsman meets minimum qualifications which shall include, but not be limited to, demonstrated expertise in:
  - (a) Long-term services and supports or other direct services for older persons or individuals with disabilities;
  - (b) Consumer-oriented public policy advocacy;
  - (c) Leadership and program management skills; and
  - (d) Negotiation and problem resolution skills.
- Ensure that the State Ombudsman serves on a full-time basis and that the Ombudsman's duties as outlined in 4.2 constitute the entirety of the Ombudsman's work.
- Monitor to ensure that the Ombudsman is not required to perform additional responsibilities that interfere with fulfillment of the mandated roles.
- Ensure that the Ombudsman has sufficient authority and access to facilities, residents and information necessary to perform the functions set forth in 4.2 above.
- Provide opportunities for training for the State Ombudsman and representatives of the Office.
- Provide personnel supervision and support of the Ombudsman.
- Provide for appropriate fiscal and operational monitoring.
- Ensure compliance with federal regulations regarding disclosure of confidential Program information.
- Ensure integration of the program's goals and objectives into the State Plan as well as elder rights priorities and initiatives to promote coordination and collaboration.
- Ensure integration of local Ombudsman representatives' goals and activities into area plans.
- Provide for mechanisms to prohibit interference, retaliation and reprisals by:
  - a long-term care facility, other entity, or individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office;

or

- by a long-term care facility, other entity or individual against the Ombudsman or representatives of the Office for fulfilling of the functions, responsibilities, or duties enumerated at §1324.13 and §1324.19.

These mechanisms shall include investigation of allegations of interference, retaliation and reprisals and imposition of sanctions when appropriate.

- Ensure legal counsel for the Ombudsman Program, which is adequate, available, conflict-free, and has competencies appropriate to a full range of support for the Ombudsman Program, including representation of long term care residents, representation of Program staff, legislative and systems advocacy.
- Ensure that the Office of the State Ombudsman fulfills the duties and responsibilities of the Office set forth in the OAA Title VII, chapter 2, and 45 CFR Parts 1321 and 1324.

#### **4.4 Role and Responsibilities of Local Host Entities:**

**Legal Authority:** 45 CFR §1324.17

Local host entities shall:

- Identify and disclose (and where appropriate describe remediation steps taken to address) conflicts of interest;
- Provide personnel management, but not programmatic oversight, of local program representatives; and
- Ensure organizational policies, procedures and practices in no way interfere with the local representative carrying out the functions assigned by the OLTCO.

#### **4.5 Role and Responsibilities of the Local Ombudsman Representatives:**

**Legal Authority:** 42 U.S.C. § 3058g(a)(5)(B)  
45 CFR §1324.19(a)

Ombudsman representatives shall:

- Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;

- Provide services to protect the health, safety, welfare, and rights of residents;
- Ensure that residents in the service area of the local host entity have regular and timely access to the services provided through the Ombudsman Program and that residents and complainants receive timely responses to requests for information and complaints;
- Represent the interests of residents before government agencies and assure that individual residents have access to, and pursue (as the representative of the Office determines necessary and consistent with resident interest) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
- Review, and as appropriate, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and facilitate the ability of the public to comment on the laws, regulations, policies, and actions;
- Promote develop of, and provide ongoing support for, resident and family councils; and
- Carry out other activities that the Ombudsman determines to be appropriate.

## **5.0 KEY OPERATING PRINCIPLES**

### **5.1 Resident Directed**

**Legal Authority:** 45 CFR §1324.19(b)(1), (2)

Regardless of the source of the complaint, the resident's expressed wishes direct whether and how the Ombudsman or Ombudsman representative assists in resolving the complaint. Except in special circumstances, the Ombudsman representative obtains written or oral consent from a resident before investigation and disclosure. Throughout the investigation and resolution process, the Ombudsman representative seeks resident direction as appropriate. When a case is closed, resolution status (e.g., resolved, not resolved, etc.) is determined by the resident or, as appropriate, their surrogate decision maker.

### **5.2 Resolution Oriented**

**Legal Authority:** 45 CFR §1324.19(b)(1), (2)

The Ombudsman's or Ombudsman representative's investigation is undertaken with the goal of resolving the complaint to the resident's satisfaction. As distinct from a regulatory agency, the primary focus is to achieve the resident's goal rather than to identify and sanction regulatory violations. Concerns identified by residents may or may not relate to violations of laws, policies or regulations, but still negatively impact the resident's quality of care and life.

### **5.3 Confidentiality**

**Legal Authority:** 42 U.S.C. § 3058g(d)  
45 CFR § 1324.11(e)(3), 45 CFR § 1324.13(e), 45 CFR § 1324.19(b)

Confidentiality is a fundamental value of the Program. The Program shall not release client or complainant identifying information without the express permission of the resident or resident's representative except by court order or as specified in policy.

### **5.4 Conflict Free**

**Legal Authority:** 42 U.S.C. § 3058g(f); 45 CFR § 1324.11(e)(4); 45 CFR § 1324.21

The LTCOP operates under policies and practices that strictly screen for conflicts of interest at both the individual and organizational levels and require evidence of remediation when conflicts are identified.

## 5.5 Accessible

**Legal Authority:** 45 CFR § 1324.13(a)(4)  
45 CFR § 1324.19(a)(3)

The Office of the State Long-Term Care Ombudsman places a high priority on ensuring that all long-term care recipients and complainants have timely and easy access to the assistance of the Program representatives to address their problems and concerns with their long-term care services. The Program provides access through locally positioned Program representatives and the operation of a statewide toll-free number.

## **6.0 STATUTORY PROTECTIONS AND AUTHORITY**

### **6.1 Access to Long-Term Care Recipients**

**Legal Authority:** 42 U.S.C. § 3058g(b)  
45 CFR § 1324.11(e)(2), 45 CFR § 1324.15(b)  
Code of Va. § 51.5-140

Under federal and state law, the Ombudsman and designated representatives of the Program have access to facilities, clients, patients and individuals receiving services, and to records of:

- Certified nursing facilities and nursing homes;
- Licensed assisted living facilities and adult day care centers;
- Home care organizations;
- Hospice facilities;
- State hospitals operated by the Department of Behavioral Health and Developmental Services;
- Providers as defined in COV 37.2-403; and
- Providers of services by an area agency on aging or any private nonprofit or proprietary agency.

Access shall be “at any time during a facility's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated.”

### **6.2 Autonomy**

**Legal Authority:** 42 U.S.C. § 3058g(h)(2), (3)  
45 CFR § 1324.11(e)(8), 45 CFR § 1324.13(a)(7), 45 CFR § 1324.15(k)  
Code of Virginia § 51.5-142.C

The state agency maintains policies and operates in a manner that ensures the autonomy of the State Long-Term Care Ombudsman to:

- Represent the interests of residents before government agencies;
- Bring the residents' perspective to policymaking forums; and
- Be free to develop and issue recommendations, opinions, and statements to legislators, policymakers, other agencies, the media, or the general public that may or may not be consistent with those of DARS or the Administration.

### 6.3 Non-Interference

**Legal Authority:** 42 U.S.C. § 3058g(j)  
45 CFR § 1324.15(i)  
Code of Va. § 32.1-138.4; § 51.5-142

Federal and state law prohibits interference with representatives carrying out the mandates of the Program and interference with those attempting to file a complaint with the Program.

### 6.4 Determinations of the Office

**Legal Authority:** 45 CFR § 1324.11(e)(8); 45 CFR § 1324.15(k)  
Code of Virginia § 51.5-142.C

Under 45 CFR § 1324.11(e)(8) and § 1324.15(k), the Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office, without necessarily representing the determinations or positions of the state agency regarding:

- Disclosure of information maintained by the Ombudsman Program within the limitations set forth in section 712(d) of the OAA;
- Recommendations to changes in federal, state and local laws, regulations, policies and actions pertaining to the health, safety, welfare, and rights of residents; and
- Provision of information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

## **7.0 CONFLICTS OF INTEREST**

**Legal Authority:** 42 U.S.C. § 3058g(f)  
45 CFR § 1324.11(e)(4); 45 CFR § 1324.21

### **7.1 Definition**

A conflict of interest exists when other interests intrude upon, interfere with, or threaten to negate the ability of the OSLTCO and its representatives to advocate without compromise on behalf of long-term care facility residents and other long-term care recipients. Conflicts of interest (COI) can negatively impact the effectiveness and the credibility of the Office and the work it performs. COI may occur at the individual or organizational level and may include:

- Conflicts of loyalty: incentives, often related to financial or employment considerations, that may shape an individual's judgment or behavior in ways that are contrary to the interests of long-term care recipients;
- Conflicts of commitment: goals or obligations that direct one's time and attention away from the interests of long-term care recipients; and
- Conflicts of control: limitations or restrictions that effectively impede one's ability to take actions to advocate for the interests of long-term care recipients.

### **7.2 Responsibility**

Both DARS and the SLTCO are responsible for identifying actual and potential conflicts, and where a conflict has been identified, for ensuring that the COI is removed or remedied.

### **7.3 Types of Organizational Conflicts of Interest**

There are two types of COI with regard to organizational placement – prohibited and remediable.

### **7.3(a) Certain organizational placements of the Program are strictly prohibited**

Federal regulations prohibit placement of the Program in an entity that:

- Is responsible for licensing, surveying, or certifying long-term care facilities (LTCFs);
- Is an association (or affiliate) of LTCFs, or any other residential facilities for older individuals or individuals with disabilities; or
- Has any ownership or investment (equity, debt, or other financial relationship) in, or receives grants or donations from a LTCF.

### **7.3(b) Organizations with certain COI that is identified and remediated may be eligible to serve as host agencies**

Organizations that have any of the following characteristics may be eligible to serve as host agencies only if all such conflicts are identified and remediated:

- Has governing board members with any ownership, investment or employment interest in LTCFs;
- Provides long-term care to residents of LTCFs, including provision of personnel for LTCFs or the operation of programs which control access to or services from LTCF;
- Provides care coordination or case management for residents of LTCFs;
- Sets reimbursement rates for LTCFs;
- Provides Adult Protective Services;
- Is responsible for eligibility determinations regarding Medicaid or other public benefits;
- Conducts preadmission screening for LTCF placements;
- Makes decisions regarding admission or discharge of individuals to or from LTCFs; or
- Provides guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents.

## **7.4 Removing or Remediating Organizational Conflicts of Interest**

The OSLTCO at state level and host entities at the sub-state level have distinct responsibilities and protocols for avoiding, mitigating or removing COI.

### **7.4(a) OSLTCO protocol for addressing organizational conflicts of interest at the state level**

The State Ombudsman annually reviews the agency's organizational structures and functions to identify any potential COI. If any conflicts are identified, the Office, in consultation with the agency director, determine remediation strategies.

When inherent COI arise between roles, responsibilities and decisions of the OSLTCO and other divisions or functions within the host agency, the process includes:

- 1) Informing the host agency director of the conflict identified;
- 2) If needed, requesting review by the Ombudsman Advisory Committee; and
- 3) If remediation strategies cannot be identified or implemented, then the OSLTCO may consult with the Office of the Attorney General.

The enabling statute consistent with federal regulation, and the overarching program Policy that affirms and guides the Ombudsman's independence in decisions, positions, and actions on behalf of long-term care recipients ensures appropriate autonomy and helps insulate the Program from conflicts of interest.

### **7.4(b) OSLTCO protocol to ensure removal / remediation of organizational conflicts of interest within the local host entity**

With regard to entities providing local LTCO services, the SLTCO is responsible, prior to designating or renewing designation of a host entity, for:

- Requiring that each host entity complete an annual inventory to identify organizational COI and mitigation strategies; and implement approved strategies in a timely manner and put processes in place for addressing additional conflicts that may arise;
- Executing with each host entity an MOA that stipulates the host entity's adherence to OSLTCO's conflict of interest policies;
- Establishing of criteria for approval of plans of remediation of COI; and
- Establishment of a grievance process through which contested decisions

regarding COI can be appealed/reviewed/reconsidered.

Failure of an entity hosting local Program operations to disclose a conflict or inability to adequately remove or remedy a conflict shall constitute grounds for refusal, suspension, or removal of designation.

#### **7.4(c) OSLTCO criteria for acceptable remediation strategies**

Criteria to be used in evaluating proposed strategies to eliminate or minimize conflicts of interest, include:

- Does the proposed plan eliminate potential for inappropriate influence on, or obstruction of, the LTCOP / its representatives fulfilling federal and state mandates;
- Does the strategy / plan include mechanisms for:
  - Regular review of effectiveness in addressing COI;
  - Proactive identification of new potential COI resulting in changes in organizational structure, activities, partnerships, governance, etc.
- Does the plan / strategy minimize or eliminate COI in the public's perception;
- Is the plan / strategy of the host entity realistic and practical;
- Is the proposed plan / strategy timely; and
- Are there clear lines of responsibility for accomplishment of the strategy?

#### **7.4(d) COI remedy when Ombudsman representative receives complaints involving host entity services**

In a situation when an Ombudsman representative is called upon to investigate a complaint involving services provided by the host entity, conflict of interest is addressed through:

- The plan approved by the State Ombudsman whereby the local host entity arranges for an adjacent local Ombudsman representative hosted within a separate entity to investigate the complaint;
- Under certain circumstances, empowering the resident and the local Ombudsman representative to choose to work together on investigation and resolution of the complaint with full disclosure of any inherent conflicts of interest; and/or

- Enhanced focused oversight by the OSLTCO to ensure avoidance of any influence attributable to conflict of interest.

## **7.5 Individual Conflicts of Interest**

Individual COI for the SLTCO, representatives of the Office, and members of their immediate family include, but are not limited to:

- Direct involvement in the licensing or certification of a LTCF;
- Ownership, operational, or investment interest (equity, debt, or other financial relationship) in an existing or proposed LTCF;
- Employment of an individual by, or participation in the management of, a LTCF in the service area or by the owner or operator of any LTCF in the service area;
- Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a LTCF;
- Accepting gifts or gratuities or significant value from a LTCF or its management, a resident or resident representative, of a LTCF where the Ombudsman or representative of the Office provides services (except where there is a personal relationship with a resident or resident representative which is separate from their role as Ombudsman or representative of the Office);
- Accepting money or other consideration from anyone other than the Office, or an approved entity, for the performance of an act in the regular course of the duties of the SLTCO or representative of the Office without approval of the SLTCO;
- Serving as guardian, conservator, or in another fiduciary or surrogate decision-making capacity for a resident of a LTCF in which the Ombudsman or representative of the Office provides services; and/or
- Serving residents of a facility in which an immediate family member resides.

## **7.6 Removing or Remediating Individual Conflicts of Interest**

DARS and the OSLTCO take the lead in ensuring that no representatives of the Office are permitted to hold positions or perform duties that would constitute or create COI.

- The SLTCO, in coordination with the local host entity, addresses the identification and remediation of individual COI through the following mechanisms:
  - Requiring all candidates seeking to be certified as an Ombudsman representative

(either staff or volunteer) to complete the COI disclosure form on an annual basis;

- Establishment of MOAs between the OSLTCO and the local host entity that include processes and obligations related to identification and remediation of individual COI;
  - Annual COI review of all local entities and representatives of the program;
  - Establishment of criteria for approval of plans of remediation relative to COI; and
  - Establishment of a grievance process through which contested decisions regarding COI can be appealed/reviewed/reconsidered.
- Individual conflicts are identified through the Memorandum of Agreement (pg. 22 8.1(c)), disclosure form, and monitoring process, through training of Ombudsman representatives to identify possible conflicts, and through identification of conflicts by the Ombudsman representatives and consultation with the State Ombudsman to remedy such conflicts which do arise. One method of resolving conflicts is through pairing of Ombudsman representatives in different jurisdictions in order to shift investigation duties when one Ombudsman representative has an individual COI.

## **7.7 Reporting**

The SLTCO identifies organizational conflicts in the LTCOP and describes steps taken to remove or remedy them within the annual report submitted to the Administration for Community Living (ACL) through the National Ombudsman Reporting System (NORS).

## **8.0 DESIGNATION AND WITHDRAWAL OF DESIGNATION of Local Host Entities**

**Legal Authority:** 42 U.S.C. § 3058g(a)(5)  
45 CFR § 1324.11(e)(6), 45 CFR § 1324.13(c)

The State Long-Term Care Ombudsman has sole authority and responsibility to designate local entities to host the local operations of the statewide Program as well as authority and responsibility to designate local representatives to carry out the work of the program.

### **8.1 Procedures for Designation of Local Host Entity**

#### **8.1(a) Criteria for designation as a local host entity**

In order to be eligible for designation by the Office of the State Long-Term Care Ombudsman (SLTCO) as a local host entity, an entity must:

- Be a public or nonprofit entity;
- Not be an agency or organization responsible for licensing or certifying long-term care services;
- Not be an association (or an affiliate of an association) of providers of long-term care or residential services for older persons;
- Have no financial interest in a long-term care facility;
- Have demonstrated capability to carry out the responsibilities outlined below;
- Have no un-remedied conflict of interest; and
- Have no personnel policies and procedures that obstruct or constrain the local Ombudsman representative in fulfilling assigned responsibilities.

#### **8.1(b) Minimum requirements for host entities:**

At a minimum, entities seeking designation as the local host entity receiving funding for, and carrying out the local functions of the Ombudsman Program will provide:

- Assurance that the entity meets all criteria for designation as a host entity;
- Assurance of its commitment to and support for the goals and objectives of the Ombudsman Program;

- A description of how each Program component shall be met by such entity;
- The staffing plan for providing adequate local Program services; and
- A description of the resources of the entity that will be provided to assist in operating the local Program office.

**8.1(c) Memorandum of Agreement (MoA)**

Upon designation by the SLTCO, the host entity and the OSLTCO/DARS shall enter into a MoA defining the roles, responsibilities, and relationship of the OSLTCO and the host entity. The MoA shall be reviewed and renewed annually. Where the host entity is an area agency on aging, the MoA shall reflect expectations and responsibilities consistent with terms described in the Area Plan and requirements under federal regulations and policies of DARS.

The MoA will:

- Specify the service area;
- Require the provider agency to adhere to all applicable federal and state laws, regulations, and policies; and
- Provide that designation by the SLTCO continues for the duration of the contract or until said designation is removed for cause or the host entity provides advance notice of its decision to no longer host local Program operations.

The execution date of the host entity’s contract with the OSLTCO to host local Program operations shall constitute the effective date of the designation.

**8.1(d) Process for designation of a local host entity:**

- The local entity shall request consideration to be designated as a host entity and submit a proposal to the SLTCO setting forth, at a minimum:
  - Assurance that the entity meets all criteria for designation as a host entity;
  - Attestation that the entity supports and commits to the goals and objectives of the OSLTCO;
  - A description of how each Program component shall be met by such entity;
  - The staffing plan for adequate local Program coverage;

- A description of the resources of the entity that will be provided to support local Program activity; and
  - A description of the entity's fiscal processes that ensure appropriate administration of LTCOP funding.
- When an RFP process is used to select an appropriate entity for designation as a local host entity, the SLTCO shall review each submitted proposal and shall choose the entity most appropriate to host Program activities based on the submitted proposals and the criteria for designation.
  - The SLTCO shall notify the applicant entity within (45) forty-five days of the receipt of the proposal of its decision. If the SLTCO refuses to designate the applicant as the host entity, the notification of non-selection shall include notice of the right of the applicant to request a grievance to appeal the SLTCO's determination in accordance with OSLTCO policy and procedures.
  - The execution date of the contract with the OSLTCO / DARS to host local Program operations shall be the effective date of the designation.

## **8.2 Procedures for Withdrawal of Designation of Local Host Entities**

The State Ombudsman may withdraw designation of an entity that locally hosts Program operations services for cause. The local host entity may voluntarily withdraw with advance notice to the State Ombudsman.

### **8.2(a) Criteria for withdrawal of designation**

The SLTCO may refuse to designate or withdraw designation of an entity as a host of local Program operations for one or more of the following reasons:

- failure of the entity to continue to meet the criteria for designation;
- existence in the entity of an unremedied conflict of interest as specified in 45 CFR § 1324.21;
- deliberate failure of the entity to disclose any conflict of interest;
- violation of LTCO confidentiality requirements by any person employed by, supervised by, or otherwise acting as an agent of the entity;
- failure of the entity to provide adequate LTCO services, including but not limited to failure to perform enumerated responsibilities, failure to fill a vacant Ombudsman

- representative position within a reasonable time, failure to submit annually the required service plans for approval by the SLTCO, or failure to use funds designated for the LTCOP for LTCO services;
- failure of the entity to adhere to the provisions of the contract for the hosting of Program services; or
  - failure of the entity to adhere to applicable federal and state laws, regulations, and policies.

#### **8.2(b) Process for withdrawal of designation of a host entity**

The process to withdraw designation of a host entity shall be as follows:

- The SLTCO shall send notice of the intent to withdraw designation at a specified date to the local entity. The notice shall include the reasons for withdrawal of designation and notice of grievance procedures.
- Withdrawal of designation as a local host entity shall not become effective until the host entity has exhausted available appeals it chooses to pursue.
- The OSLTCO and DARS will terminate the portion of the contract between the host entity and the OSLTCO and DARS that pertains to Ombudsman Program services.

#### **8.2(c) Voluntary withdrawal of a host entity**

A host entity may voluntarily relinquish its designation by providing written notice to the OSLTCO / DARS. Such notice shall be provided sixty days in advance of the date of the relinquishment of designation.

#### **8.2(d) Continuation of Ombudsman Program services during relinquishment or withdrawal of designation as host entity**

Where a host entity is in the process of appealing the withdrawal of designation or has given notice of intent to relinquish designation:

- The hosting entity and the SLTCO shall arrange for the continuation of Program services until designation of another entity is effective;
- The host entity shall surrender intact to the OSLTCO all Program records, and identification cards of Ombudsman representatives associated with the host entity;
- The host entity shall, at the discretion of DARS, surrender any equipment purchased

with funds designated for Program services; and

- The host entity shall surrender the balance of any advanced state or federal monies allocated for Program operation to DARS.

## **9.0 QUALIFICATIONS AND TRAINING OF PROGRAM PERSONNEL**

### **9.1 Qualifications of the State LTC Ombudsman**

**Legal Authority:** 42 U.S.C. § 3058g(a)(2), (3)  
45 CFR § 1324.11(c), (d)

The State Ombudsman is required to serve on a full-time basis, performing the leadership, management, and Ombudsman Program functions and duties, and is not responsible for the work of non-ombudsman services or programs except on a time-limited, intermittent basis. Minimum qualifications for the State Ombudsman include expertise in long-term services and supports or other direct services for older persons or individuals with disabilities; experience in consumer-oriented public policy advocacy; leadership and program management skills; and negotiation and problem resolution skills.

### **9.2 Qualifications of Local Ombudsman Representatives**

**Legal Authority:** 42 U.S.C. § 3058g(a)(5)  
45 CFR § 1324.13(c)

The SLTCO is the head of a unified, statewide program, and is required to establish policies, procedures, and standards for administration of the Program, including designation and training of representatives of the Office, and, if necessary, refusal, suspension, or removal of designation of representatives of the office. The State Ombudsman certifies that the host entity's candidate for designation as a representative of the SLTCO has successfully completed all training requirements and demonstrated, during a monitored probationary period, competency to perform the role.

#### **9.2(a) Minimum qualifications for the position of Ombudsman representative**

An individual hired by the host entity to be designated as an Ombudsman representative shall have experience congruent with the responsibilities the Ombudsman Program and possess the following minimum qualifications:

- General knowledge of aging, long-term care services, and aging related issues;
- Ability to empathize and effectively communicate with older and/or disabled adults and their families;
- Good verbal and written communication skills;
- No conflict of interest;
- Experience/ability to effectively advocate on behalf of recipients of long-term care services;
- Education/training in human services, gerontology, social work, counseling, nursing

services, health administration, law/advocacy or other related fields; and/or

- Experience in programs or activities relative to aging services, disability services, programs serving adults, elder rights, or other experience appropriate to the responsibilities of an Ombudsman representative.

The credentials of any individual to be designated as an Ombudsman representative shall be approved by the State Ombudsman. The State Ombudsman shall extend assistance to host entities with the hiring process.

### **9.3 Training of Local Ombudsman Representatives:**

**Legal Authority:** 42 U.S.C. § 3058g(h)(4); 45 CFR § 1324.13(c)(2)

#### **9.3(a) Pre-certification/designation: training for ombudsman representative candidates**

The Office of the State Long-Term Care Ombudsman shall arrange for the training of individuals hired to fill an Ombudsman representative position. To be eligible for certification as a representative of the State Long-Term Care Ombudsman, candidates must successfully complete a multifaceted training specified by the SLTCO. Training shall include, at minimum, a basic curriculum on LTCOP mission, philosophy, ethics and regulations; position roles as well as complaint/case process and protocol, and non case activities; Virginia specific long term facilities, services and supports; an overview of state and federal regulations governing long term care; review of residents' rights; and basic mediation skills training. The Ombudsman representative candidate training requirements, a minimum of fifty-five hours, must be completed within the first two months of being hired. Exceptions to this time period must be approved by the State Ombudsman. The Ombudsman representative candidate shall be evaluated by the OSLTCO staff, in consultation with the host entity supervisor, through interview and/or testing to assure basic knowledge of the Long-Term Care Ombudsman core principles and operations, and long term care in general.

#### **9.3(b) Statewide training**

Subject to the availability of funds, the OSLTCO shall sponsor at least one annual statewide meeting and training session.

- The annual statewide meeting and training is mandatory for all certified Ombudsman representatives and Ombudsman representative candidate staff. Any exception/absence must have the prior approval of the Ombudsman.
- Maintenance of certification is dependent upon the annual statewide meeting and training attendance.

- The State Ombudsman shall provide for additional training opportunities (in-person, teleconference, webinar etc.) and shall clearly notify Ombudsman representatives and Ombudsman representative candidates as to whether such training is mandatory or optional.

### **9.3(c) Continuing education**

- The OSLTCO may provide, or assist in arranging, training to local Ombudsman representatives on an as needed basis.
- Each fiscal year, Ombudsman representatives' staff shall attend a minimum of twelve hours of training relevant to their position, outside of any State Ombudsman sponsored training. Appropriate continuing education may include, but is not limited to, such topics as elder rights, elder abuse prevention, advocacy skills, mediation, conflict resolution, public benefits, and other relevant long-term care topics and issues. Local Ombudsman representatives shall consult with the OSLTCO staff if there is any question as to whether a particular training qualifies toward meeting the twelve hours continuing education requirement. If a part-time representative has barriers to obtaining twelve hours of continuing education, the representative or the local supervisor of the representative may request an adjustment to the number of hours by contacting the SLTCO.
- Ombudsman representative staff shall maintain documentation of continuing education training in the Program's electronic database.

## **9.4 Certification**

**Legal Authority:** 45 CFR § 1324.13(c)(3)

Certification is the designation granted by the State Long-Term Care Ombudsman to an individual hired by a host entity to serve as an Ombudsman representative, who meets minimum qualifications, is free of conflicts of interest, and has successfully completed training and other criteria stipulated by the OSLTCO. Designation as a Certified Long-Term Care Ombudsman Representative authorizes such individual to act as a representative of the SLTCO. All Certified Long-Term Care Ombudsman representatives shall adhere to the Code of Ethics for Ombudsmen developed by the National Association of State Long-Term Care Ombudsman Programs.

- After the initial certification is granted, certification as a representative of the Office of the State Long-Term Care Ombudsman is maintained annually by adherence to the Program's policies and procedures, participation in the Annual Statewide Ombudsman Training and Meeting, attendance at any additional trainings designated as mandatory by the State Ombudsman, and the successful completion of twelve hours annually of continuing education outside of training offered by the State Ombudsman office.

- Certification is active only as long as the individual representative is employed by a designated entity that hosts local Program operations. If the representative changes job assignments within the host entity, resigns or is terminated from the host entity, the status of Certification shall be deactivated.

## **10. COMPLAINT PROCESSING**

**Legal Authority:** 42 U.S.C. § 3058g(a)(3)(A)  
45 CFR § 1324.13(a)(1), 45 CFR § 1324.19(b)  
Code of Va. §51.5-41

The Ombudsman / Ombudsman representative shall identify, investigate and resolve complaints made by or on behalf of residents of nursing facilities and assisted living facilities, and recipients of community-based long term services and supports that relate to action, inaction or decisions, that may adversely affect the health, safety, welfare and rights of the care recipients.

### **10.1 Receiving Complaints**

- Complaints may be received by any manner (including telephone, email, fax, mail, or in person) from any source. The Ombudsman representative shall be easily accessible and provide confidential means for receiving complaints.
- Long-term care facility residents or community-based service recipients may request an Ombudsman representative visit them in their home. The Ombudsman representative shall work to provide easy access to Ombudsman Program services.
- The Ombudsman representative may initiate a complaint on behalf of care recipients.
- Regardless of the source of the complaint, the Ombudsman representative serves the resident / long term care recipient, seeking to address all complaints through a resident-directed approach consistent with the Program's values and principles.

### **10.2 Obtaining Consent**

Prior to investigation and/or action on a complaint, the Ombudsman representative shall obtain a signed 'Authorization and Waiver of Confidentiality' form and/or receive verbal authorization / consent to proceed and document such authorization in the case record. The Ombudsman representative shall explain to the complainant that his/her identity and the identity of the resident / care recipient is protected under state and federal law.

The complainant must be informed of the scope of confidentiality laws and must also be advised of the possibility that the facility or service provider may deduce the identity of the complainant or resident/service recipient even if the resident identifying information is not disclosed. The Ombudsman representative shall explain potential limitations in investigating and resolving complaints when resident identifying information is withheld.

### **10.2(a) When a resident / care recipient is able to communicate informed consent**

The Ombudsman representative shall obtain consent through the completion of the Authorization and Waiver form or if communicated in another manner, document consent contemporaneously in the case record.

### **10.2(b) When a resident / care recipient is unable to communicate informed consent**

The Ombudsman representative shall determine whether there is a legal representative that can appropriately give consent on the resident's behalf.

The following principles apply:

- If the resident /care recipient has a representative able to communicate on the resident's / care recipient's behalf, the Ombudsman representative shall determine whether to rely upon a resident's / care recipient's representative to communicate or make determinations on behalf of the resident related to the complaint processing, by ascertaining the extent of the authority that has been granted to the representative under court order (guardian or conservator), by POA or other document by which the resident / care recipient has granted authority to the representative or under other applicable law.
- If the resident / care recipient has a legal representative, but the Ombudsman representative has reason to believe that the legal representative is not acting on behalf of the resident's / care recipient's best interest, then the Ombudsman representative shall consult with the SLTCO as to how to proceed.
- If the resident / care recipient has no representative, the Ombudsman representative shall consult with the SLTCO regarding working to investigate and resolve the complaint in order to protect the health, safety, welfare and rights of the individual.

### **10.3 Sharing Complaint Information**

Ombudsman representatives may provide information regarding the complaint to another agency in order for such agency to substantiate the facts for regulatory, protective services, law enforcement or other purposes so long as the Ombudsman representative adheres to the disclosure policies required in OAA 712 (d) and 45 CFR §1324.11(e)(3).

### **10.3(a) Resident directed process for disclosure**

- When the resident / care recipient or their representative, where applicable, expresses a desire /goal to involve regulatory entities, protective services or law enforcement action, and the Ombudsman representative determines that the resident / care recipient or their representative, has communicated informed consent, the Ombudsman representative shall assist the resident / care recipient or representative in contacting the appropriate agency and may disclose information for which the Ombudsman representative has permission / informed consent to share.
- In circumstances where resident's / care recipient's or their representative's (when applicable) goals can be served by disclosing information to a facility or provider staff and/or referrals to an agency, and the Ombudsman representative has the resident's / care recipient's or their representative's (where applicable) informed consent, the Ombudsman representative may assist the resident / care recipient or their representative in contacting the appropriate facility / provider staff or the agency, and provide information on how contact information may be obtained; and/or may disclose information for which the resident has provided consent to an appropriate facility or provider staff and/or agency consistent with disclosure procedures.
- Per state and federal law for the LTCOP, the State Ombudsman and the Ombudsman representatives are not bound by state mandatory reporting laws. In order to comply with the wishes of the resident / care recipient or their representative, when applicable, and with the Program's confidentiality mandate, the Ombudsman representative shall only report suspected abuse, neglect or exploitation of a resident or care recipient when the resident, care recipient or their representative (when applicable) has communicated informed consent to such disclosure.
  - Exception – When a resident / care recipient is unable to provide informed consent and the Ombudsman representative has reasonable cause to believe that the care recipient's representative is not acting in the best interests of the care recipient, the Ombudsman representative may report suspected abuse, neglect or exploitation.

### **10.3(b) Process for disclosure when resident cannot communicate consent**

The Ombudsman representative may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight and to protective services, and may access administrative, legal or other remedies and/or law enforcement action in the following circumstance:

- Resident / care recipient is unable to communicate consent to the Ombudsman representative;

- The resident has no resident representative;
- The Ombudsman representative has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare or rights of the resident;
- The Ombudsman representative has no evidence indicating that the resident would not wish a referral to be made;
- The Ombudsman representative has reasonable cause to believe that it is in the best interests of the resident to make a referral; and
- The Ombudsman representative obtains the approval of the State Ombudsman.

**10.3(c) Disclosure when the Ombudsman representative personally witnesses suspected abuse, neglect, or exploitation of a resident or care recipient**

The Ombudsman representative shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies.

- If the resident is able to communicate informed consent or has a resident representative available to provide informed consent, the Ombudsman representative shall follow the direction of the resident or their representative.
- If the resident is unable to communicate informed consent, and has no representative available to provide informed consent, the Ombudsman representative shall:
  - Open a case with the Ombudsman representative as the complainant and follow the program's complaint resolution procedures; and
  - If the Ombudsman representative has no evidence indicating that the resident would not wish a referral to be made; and the Ombudsman representative has reasonable cause to believe that disclosure would be in the best interest of the resident; and the Ombudsman representative obtains the approval of the State Ombudsman, then the Ombudsman representative shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies to investigate and address abuse, neglect or exploitation. In addition, the Ombudsman representative may report the suspected abuse, neglect, or exploitation to other appropriate agencies for regulatory oversight, and access administrative, legal or other remedies' and/or law enforcement action.

## **10.4 Complaint Investigation**

### **10.4(a) Goals of complaint investigation**

Complaints shall be investigated (including but not limited to complaints related to abuse, neglect or exploitation) for the purposes of:

- Resolving the complaints to the resident's or care recipient's satisfaction; and
- Protecting the health, welfare, and rights of the resident or care recipient.

The needs, rights and concerns of the long-term care recipient are the primary guide for the actions of the Ombudsman and Ombudsman representative.

### **10.4(b) Principles and process for complaint investigation**

- Ombudsman representatives may identify, investigate and resolve complaints on behalf of one resident / care recipient or multiple residents / care recipients or for residents of an entire facility.
- All complaint investigations shall be undertaken with the goal of resolving the complaint(s) to the satisfaction of the resident/care recipient.
- When the complainant and/or service recipient has requested anonymity, the Ombudsman representative may not know the identity of the complainant and/or service recipient. If during the course of the investigation, the Ombudsman representative determines the identity of the complainant and/or service recipient due to the specifics of the complaint, the Ombudsman representative shall make every effort to protect the complainant's / service recipient's anonymity.
- When consent has been communicated, the Ombudsman representative shall interview the complainant and/or service recipient as part of the complaint investigation except when circumstances dictate otherwise.
- The Ombudsman representative shall support and maximize the resident's / care recipient's participation, or their representative's participation (where applicable) in the process of investigating and resolving the complaint, by
  - Offering privacy for confidentiality in exchanging information and for hearing, investigating and resolving complaints.
  - Involving the resident / care recipient or their representative (when applicable) in the complaint investigation and work to resolve to the extent that they desire to be involved.

- Personally discussing and reviewing the complaint(s), and the strategy to investigate and resolve the complaint(s) with the resident / care recipient or their representative, where applicable.

## 10.5 Abuse and Neglect Reporting

**Legal Authority:** 45 CFR § 1324.11(e)(3), 45 CFR § 1324.19(b)(3)

Under the federal regulations governing the State Ombudsman Program (OAA Title VII, Chapter 2, Section 712), the Ombudsman Program is prohibited from disclosing the identity of any complainant (or resident with respect to whom the Office maintains complaint data) without the express consent of the resident who is the subject of the complaint or of that resident's legal representative. This excludes Ombudsman representatives from the requirements of any state's mandatory reporting laws.

Because the Ombudsman Program takes very seriously any reports of abuse or neglect of long-term care recipients, and because the health, safety, welfare and rights of long-term care recipients is always our primary concern, the following guidance governs the practice of the Ombudsman representative who receives a report of abuse or neglect of a long-term care recipient:

- Advise the complainant of the importance of reporting suspected abuse or neglect immediately to Adult Protective Services (APS), and provide contact information as needed to aid the complainant in reporting. If the complainant is the long-term care recipient and is willing to give consent to reporting, report immediately to APS. If appropriate, make arrangements to conduct an investigation jointly with APS.
- If the resident/recipient who is the complainant or suspected victim of the alleged abuse refuses permission to report and there is reason to believe that the resident is in imminent danger, contact the Office of the State Ombudsman to seek advice regarding possible deviation from the regulations on confidentiality.
- In whatever circumstance, the resident shall not be abandoned to the abuse or neglect. The Ombudsman representative shall continue reasonable efforts to seek permission to report, and proceed irrespective with strategies to protect the resident and minimize the possibility of further harm.
- If the abuse is reported to APS, seek follow-up information from APS to verify that assistance is being rendered, and continue to visit the resident if possible to monitor that no additional harm is occurring and that appropriate resolution (satisfactory to the resident) has been achieved.

## 11.0 OMBUDSMAN PROGRAM FILES

**Legal Authority:** 45 CFR § 1324.11(e)(i), 45 CFR §1324.13(d), 45 CFR §1324.15(f),  
45 CFR §1324.17(b)(3)-(9)  
Code of Va. § 51.5-141

The Ombudsman Program shall maintain records of complaints in a secure, HIPAA compliant database. Any printed copies of cases shall be maintained in a locked file, accessible only to the designated Ombudsman representative. If hard copies of complaint documentation exist, they shall be filed by facility/provider in chronological order.

### 11.1 Confidentiality

**Legal Authority:** 42 U.S.C. § 3058g(d)(2)  
45 CFR § 1324.11(e)(3)  
Code of Va. § 51.5-141

The Code of Virginia §51.5-141 and the OAA, Title VII, Chapter 2, Sec. 712 protects the confidentiality of the Long-Term Care Ombudsman Program's complaint files. These files are exempt from the Freedom of Information Act. This information can be released only by written consent of the complainant and resident/service recipient, or by court order or in strictly limited circumstances set out in federal law. [45 CFR §1324.11].

- (a) Ownership: All Ombudsman Program records are the property of the Office.
- (b) Access: Only designated representatives of the Program who have signed an agreement attesting to their understanding of and compliance with confidentiality requirements of the OSLTCO have access to records of the program.
- (c) Response to request for records/files:
  - i. The identities of the complainant and/or resident/service recipient cannot be released without their written consent to agencies requested to investigate or review the complaint, or to the provider of services. The Authorization and Waiver of Confidentiality Form is to be used to obtain such consent. A complainant's/resident's consent can be obtained orally if such consent is documented contemporaneously in the case file.
  - ii. When an Ombudsman representative receives a request for case or other records, the OSLTCO shall be informed and consulted for guidance.

## 11.2 Disclosure

**Legal Authority:** 42 U.S.C. § 3058g(d)  
45 CFR § 1324.11(e)(3), 45 CFR § 1324.13(e)  
45 CFR § 1324.19(b)(6)  
Code of Va. § 51.5-141

Except in certain specified circumstances, complaint records may not be disclosed to the public or any other entity without the permission of the resident/care recipient and/or complainant, or by court order, as described above.

- **Complaint records:**  
Complaint records, including the identity of any care recipient or complainant may not be disclosed unless: (1) the complainant or resident/recipient, or the resident's legal representative consents to the release and such consent is documented in the case file; or (2) disclosure of such records is required by court order.
- **Aggregate information:**  
The Ombudsman representatives may disclose to any inquiring party, aggregate information about the number and type of complaints received, investigated and closed by the LTCOP about a facility or service provider, during a specified period of time. Information may be provided about the complaint category (e.g., resident care; hygiene; dietary, etc.), the finding (e.g., verified, or not verified), and final disposition (e.g., resolved, not resolved, etc.). Information regarding active complaints shall not be provided.

## 11.3 File / Record Retention and Destruction

All Program activity and case records shall be retained for five years. Hard copy records with client identifying information shall be retained in locked files accessible only to the authorized representatives of the OSLTCO. Electronic records maintained in the OSLTCO approved HIPAA compliant secure database accessible only to the Ombudsman and authorized Ombudsman representatives shall be retained for five years.

When destroying hard copy records, program staff shall follow the host entity's secure protocol as to process for hard copy destruction. A document shall be maintained noting method of destruction, the date of the record(s) destruction, the date range and type of records destroyed, the method of destruction and name of staff who witnessed the destruction or personally destroyed the records.

The OSLTCO shall direct the destruction of electronic records. Documentation shall be maintained containing dated communication of approval and request to delete specified type of records, date range and include verification destruction has been completed.

## 12.0 GRIEVANCE PROCEDURES

### **Legal Authority:** 45 CFR § 1324.11(e)(7)

The OSLTCO provides for a grievance process that receives and reviews grievances regarding the determinations or actions of the Ombudsman and representatives of the Office. Such grievances may relate to determinations of the Office regarding designation or removal of designation of a local Ombudsman entity or representative. Notwithstanding the grievance process, the Ombudsman shall make the final determination to designate or to refuse, suspend, or to remove designation of a local Ombudsman entity or representative of the Office.

The grievance procedure is not intended to supplant any contracting or subcontracting entities' internally established grievance procedure for disputes not related to Ombudsman representative duties.

**Purpose:** *to be responsive to concerns of others regarding performance of an individual Ombudsman representative, host entity, or Ombudsman Program policy or decision.*

### 12.1 Grievance Procedure When a Complaint is Against Ombudsman Representative Staff or Volunteer Ombudsman Representatives

- A complaint against a local volunteer Ombudsman representative shall be directed to the designated local Ombudsman staff representative.
- A complaint against a local Ombudsman representative who is supervised locally by a designated Ombudsman representative shall be directed to such supervisor.
- A complaint against a local Ombudsman representative not under the supervision of another local Ombudsman representative shall be directed to the State Ombudsman.
- Investigation into the complaint, including fact-finding from all parties, shall be initiated within ten working days of receiving the complaint.
- The nature of the complaint and the investigation shall be promptly documented.
- A response back to the complainant shall be given with fifteen working days and shall include any relevant action identified and outcome, as well as contact information for the OSLTCO/DARS should the complainant want to take the grievance up to the next level. A copy of the LTCOP grievance process shall be included.
- Upon a complainant's request for the second tier of grievance consideration, review shall be provided with (30) thirty working days. A written response including any

relevant actions identified and outcome shall be provided to the complainant.

### **12.2 Grievance Procedure When a Complaint is Against Office of the State Long-Term Care Ombudsman Staff**

- A complaint about the State Ombudsman staff shall be forwarded to the State Ombudsman. (If the complaint is against the State Ombudsman, the complaint shall be forwarded to the Commissioner of DARS.)
- The State Ombudsman shall promptly investigate the complaint and fact find from both parties within fifteen working days.
- The nature of the complaint and the investigation shall be promptly documented.
- A response back to the complainant shall be provided and shall include any relevant action identified and outcome. A copy of the OSLTCO grievance procedure along with the name of the Commissioner of DARS shall be included if the complainant wishes to take the grievance up to the next level.
- Upon a complainant's request for the second tier of grievance consideration, review shall be provided with thirty working days. A written response including any relevant actions identified and outcome shall be provided to the complainant.

### **12.3 Grievance Procedure When a Complaint is Against the State Ombudsman**

- A complaint about the State Ombudsman shall be forwarded to the Commissioner of DARS.
- The Commissioner and the OSLTCO Advisory Committee shall promptly investigate the complaint and fact find from both parties within fifteen working days.
- The nature of the complaint and the investigation shall be promptly documented.
- A response back to the complainant shall be provided in writing within thirty working days of the filing of the complaint and shall include any relevant action identified and outcome.

### **12.4 Grievance Procedure for Local Host Entities with a Complaint Against OSLTCO/DARS**

- A local entity complaint about a decision of the State Ombudsman or DARS with regard to designation, withdrawal of designation, or other contractual issues shall be forwarded to the State Ombudsman for possible reconsideration.
- The State Ombudsman and/or the Commissioner of DARS will review the decision and advise the local entity within fifteen working days.